

August 12, 1997

D.P.U. 97-68

Investigation by the Department of Public Utilities on its own motion for the establishment of discounts on intrastate telecommunications services provided to schools and libraries, pursuant to Section 254(h)(1)(B) of the Telecommunications Act of 1996, 47 U.S.C. §§ 251 et. seq.

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## I. INTRODUCTION

On June 30, 1997, the Department of Public Utilities ("Department") opened an investigation to establish discounts on intrastate telecommunication services for eligible schools and libraries in accordance with the directives of the Federal Communications Commission ("FCC") Order No. 97-157 ("Order")<sup>1</sup> implementing § 254(h) of the Telecommunications Act of 1996 ("the Act"). The Department solicited comments on its proposal to adopt intrastate discounts equal to those established at the federal level in order to expedite participation by schools and libraries in Massachusetts. Order Opening Investigation, D.P.U. 97-68, at 3-4. In its Order, the Department also stated that it may reconsider the discount levels if future circumstances warrant.

Section 254(h)(1)(B) states in relevant part:

All telecommunications carriers serving a geographic area shall, upon a bona fide request for any of its services that are within the definition of universal service . . . provide such service to elementary schools, secondary schools, and libraries for educational purposes at rates less than the amounts charged for similar services to other parties. The discount shall be an amount that the [FCC], with respect to interstate services, and the States, with respect to intrastate services, determine is appropriate and necessary to ensure affordable access to and use of such services by such entities.

In its Order implementing § 254(h), the FCC determined that eligible schools and libraries should receive discounts of between 20 percent and 90 percent on all telecommunications services, Internet access, and internal connections provided by telecommunications carriers, subject to an annual federal spending limit of \$2.25 billion. Order at ¶ 425, citing 47 U.S.C. §§ 254(c)(3) and 254(h)(1)(B). The FCC also determined that economically disadvantaged schools

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<sup>1</sup> In Re Federal-State Joint Board on Universal Service, CC Docket No. 96-45, FCC 97-157 (May 8, 1997).

and libraries, as well as schools and libraries located in rural areas, shall receive greater discounts to ensure affordable access to designated services. Id. at ¶ 425, 504. Finally, the FCC determined that the range of discounts for eligible schools and libraries will be correlated to the percentage of students eligible for the national school lunch program in the school district and whether the school or library is located in a rural or urban area.<sup>2</sup> Id. at ¶ 492, 509, 512. Thus, the FCC adopted the following matrix:

SCHOOLS AND LIBRARIES DISCOUNT MATRIX		DISCOUNT LEVEL	
HOW DISADVANTAGED?		urban	rural
% of students eligible for national school lunch program	(estimated % of US schools in category)	discount (%)	discount (%)
< 1	3	20	25
1-19	31	40	50
20-34	19	50	60
35-49	15	60	70
50-74	16	80	80
75-100	16	90	90

<sup>2</sup> Schools may use either an actual count of students eligible for the national school lunch program or federally-approved alternative mechanisms to determine the level of poverty for purposes of the universal service discount program. Order at ¶ 510. Such federally-approved alternative mechanisms are contained in Title I of the Improving America's Schools Act, 20 U.S.C. §§ 6301 et seq. Id. These alternative mechanisms permit schools to choose a surrogate method for determining the number of students who would be eligible for the national school lunch program from existing sources of poverty data. Id.; see 34 C.F.R. § 200.28(a)(2)(i)(B).

Id. at ¶ 520.

The FCC stated that schools and libraries will be required to solicit competitive bids for services to be eligible for discounts. Id. at ¶ 480. Carriers will not be allowed to submit bids higher than the lowest price they charge to similarly situated non-residential customers in their geographic service area for similar services (i.e., "the lowest corresponding price"). Id. at ¶ 484. Schools and libraries must meet certain certification requirements to become eligible for a particular discount level. Id. at ¶ 522.

The FCC determined that federal support will be available on a first-come, first-served basis. Id. at ¶ 535. The FCC is currently organizing an administrative structure that will have responsibility for implementation of the new universal support mechanisms. Id. at ¶ 867. Once that structure is in place, schools and libraries may begin the application process to establish their eligibility for particular discounts levels. Funds will first become available on January 1, 1998 for use during the 1997-1998 school year. Id. at ¶ 607.

The FCC Order establishes a funding mechanism for the provision of both interstate and intrastate services for schools and libraries. Id. at ¶ 550. However, States are required to adopt intrastate discounts that are at least equal to the discounts on interstate services as a condition of federal universal service support for schools and libraries in a given State. Id. States may adopt intrastate discounts that are greater than those established as federal levels. Id. at ¶ 551. However, the incremental difference between any increased discounts adopted by the State and the discounts adopted at the federal level will not be eligible for federal support. See id. Therefore, a state that chooses to adopt greater discounts must also establish a funding mechanism to support the difference between the federal and state discounts.

## II. SUMMARY OF COMMENTS

The Department received written comments from AT&T Communications of Massachusetts, Inc. and its subsidiary AT&T Wireless Services Inc. (collectively "AT&T"), Boston Public Schools, City of Boston, City of Fall River, Commonwealth of Massachusetts Board of Library Commissioners, Massachusetts State Representative Stephen Kulik, the Attorney General of the Commonwealth of Massachusetts, C/W MARS, Inc., Mass NetDay, Massachusetts Association of School Superintendents, Inc., Massachusetts Library Association, Massachusetts Organization of Educational Collaboratives, Massachusetts Teachers Association, MCI Telecommunications Corporation ("MCI"), New England Cable Television Association, Inc., New England League of Middle Schools, NYNEX, Parents Alliance for Catholic Education ("PACE"), Research for Better Teaching, South Shore Educational Collaborative, and Western Massachusetts Regional Library System.

All of the comments received by the Department were in support of the Department's proposal to adopt discount levels equal to those established at the federal level. However, three commenters, AT&T, MCI and PACE, expressed concern about various aspects of the discount program.

### A. PACE

PACE states that it is opposed to the proposed discount range eligibility method because a school's discount rate will be determined by the percentage of students eligible for the national school lunch program at that school (PACE Comments at 1). According to PACE, a majority of the Commonwealth's Catholic schools do not participate in the national school lunch program and therefore, the eligibility criterion imposes a major administrative burden on those schools (id.).

PACE states that many Catholic schools, particularly those in the Commonwealth's low-income urban areas, have student populations that mirror the demographics of neighboring public schools. Therefore, PACE proposes that the Department seek a waiver from the FCC's discount method and establish an "assumed proportionality approach" for determining discount rates for non-public schools (id.). PACE explains that this approach would apply the poverty percentage of each public school attendance area to the number of non-public school children who reside in that area so that if a public school area has 50 percent poverty and 200 children who reside in that area attend the non-public school, 100 non-public school students would be deemed to be poor, and thus determine the discount rate for the school (id. at 1-2).

B. MCI

MCI states that the discount matrix used to allocate universal service assistance among eligible schools and libraries as set forth by the FCC is sufficient and should be adopted by the Department (MCI Comments at 1-2). However, MCI states that the Department should "continue its investigation" to (1) establish a competitively neutral and administratively efficient universal service funding mechanism to allocate those funds, and (2) implement a set of rules to ensure that only eligible schools and libraries have access to services at a discount, that only services used directly in the educational process qualify for that discount, and to require competitive bidding by all eligible beneficiaries in order to qualify for the proposed discounts (id. at 2).

C. AT&T

AT&T states that it supports the adoption of the FCC discount matrix in Massachusetts (AT&T Comments at 1). However, AT&T states that, with respect to carrier assessment, it is

AT&T's position that wireless carriers should only be assessed on basic charges for originating mobile-to-land calls (id.). AT&T argues that wireless customers will pay more on a per minute basis than landline customers because the wireless customer pays more on a per minute basis (id. at 1-2). AT&T further argues that to assess a wireless carrier based on originating and terminating calls is discriminatory to wireless telecommunication providers (id. at 2).

#### IV. ANALYSIS AND FINDINGS

With regard to the concerns raised by AT&T, MCI and PACE, the Department notes that these issues have been settled, to a certain extent, by the FCC. Specifically with regard to PACE's concerns, the FCC has stated that a school may use either an actual count of students eligible for the national school lunch program or federally-approved alternative mechanisms to determine the level of poverty for purposes of the universal service discount program. Order at ¶ 510. Such federally-approved alternative mechanisms equate one measure of poverty with another and are contained in Title I of the Improving America's Schools Act, 20 U.S.C. §§ 6301 et seq.<sup>3</sup> Id. Since PACE's comments do not address the suitability of the federally-approved alternative mechanisms for its purposes, the Department cannot determine, at this point in time, that such mechanisms would be inadequate to meet PACE's needs. However, nothing would preclude PACE from raising this issue with the Department once the federal universal service fund is fully operational and the Department is convinced that the issue warrants further consideration.

With regard to the concerns raised by MCI and AT&T, the Department notes that both carriers and participating schools and libraries must abide by the FCC's rules for the federal universal service fund relating to eligibility determinations, competitive bidding and carrier

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<sup>3</sup> See 34 C.F.R. § 200.28(a)(2)(i)(B)(1) and (2).

assessments. Moreover, because a state-level change to the schools and libraries discount program as set forth by the FCC could result in a need for the Department to establish a separate funding mechanism and delay benefits to schools and libraries within the Commonwealth, the Department believes that the most prudent course of action at this point in time is to adopt the federal discount matrix without further investigation. To the extent that, in the future, the federal universal service framework established by the FCC is inadequate in meeting the needs of schools and libraries or in allaying the concerns raised in the proceeding by particular carriers, the Department may determine that further action is necessary, including a possible revision to the intrastate discounts.

#### IV. ORDER

Accordingly, after due notice, hearing, and consideration, it is

ORDERED: That the Department of Public Utilities hereby adopts the discount matrix established by the Federal Communications Commission as intrastate discount levels for schools and libraries within the Commonwealth of Massachusetts, pursuant to Section 254(h)(1)(B) of the



Telecommunications Act of 1996, 47 U.S.C. § 151 et seq.

By Order of the Department,

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John B. Howe, Chairman

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Janet Gail Besser, Commissioner